IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 132 OF 2007.

Natalina Fernandes
(since deceased) through
her legal representatives:

1. Lea Christina Barreto,
   Daughter of Manuel Vicente Fernandes
   and her husband:

2. Miguel Jose Barreto (since
   deceased) through his legal
   representative :-
   (a) Mr. Freddy Barreto,
   resident of H.No. 830,
   Limike Alto Porvorim,
   Bardez, Goa. ... Petitioners.

Versus

1. Yeshwant S. Asnodkar.
2. Balchandra S. Asnodkar
   both residents of Budkiwaddo,
   Porvorim, bardez.
3. Mrs. Philomena Mary Silveira,
   and her husband:
4. Joaquim Xavier Margarido Silveira,
   resident of Dubai.
5. Virginia Fernandes,
   resident of Mumbai.
6. Hilda Nancy Fernandes,
   resident of Mumbai. ....

Respondents.

Shri M.B. D'Costa, Senior Advocate with Shri J. A. Lobo, Advocate for the Petitioners.

Shri U. Rao, Advocate for the Respondent No.1.

CORAM: S. A. BOBDE, J.

DATE: 9th MARCH, 2007.

ORAL JUDGMENT:

Rule. Rule returnable forthwith. Heard by consent.

2. By this petition, the petitioners challenge the Order of the Deputy Collector

and SDO, Mapusa in revision. The learned Deputy Collector and SDO has upheld the Order of the Mamlatdar, permitting the reopening of evidence on the ground that the evidence already given is not in accordance with law.

3. In brief, the Mamlatdar has permitted the reopening of evidence, because the evidence recorded before him was apparently that of the Power of Attorney of one Yeshwant Asnodkar (Applicant No.1). Apparently, after the evidence was over, it was realized by that party that the evidence of the Power of Attorney would not be valid in view of the Judgment of the Supreme Court in the case of ***Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. and others*** reported in **A.I.R. 2005 S.C. 439.** Therefore that party applied for appointment of a Commissioner to record the evidence of Yeshwant Asnodkar who had constituted a Power of Attorney to give evidence. This application was allowed by the Mamlatdar on 5th January, 2006. That Order was challenged by the petitioners before the Deputy Collector by way of revision. The Deputy Collector has dismissed the revision.

4. Mr. D'Costa, the learned Counsel for the petitioners, submitted that the application for reopening of the evidence is unwarranted and is not bonafide and therefore the order allowing the reopening of evidence may be set aside.

5. Having considered the matter, I am of view that the Order to reopen the evidence appears to have been made by the Mamlatdar and upheld by the revisional authority on the ground that the evidence tendered in the case was by a person not competent to give evidence, according to the decision of the Supreme Court reported in A.I.R. 2005 S.C., 439. That, in my view, is good enough reason for reopening the

evidence and for permitting the evidence of the competent witness.

6. There is therefore no miscarriage of justice in the case and it is not a fit case for the exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

7. It is made clear that the Mamlatdar shall permit the evidence only of Yeshwant Asnodkar which had constituted the Power of Attorney to give evidence and no other witness on behalf of the Applicant. In case the non-applicant makes an application for examining a witness/es, whose examination is shown to be necessary on account of the evidence given by Yeshwant Asnodkar, the Mamlatdar shall consider the appropriateness of such application and grant it in accordance with law.

Rule discharged.

S. A. BOBDE, J.

sl.